

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-07-SE-171
Richmond Association	)	NAL/Acct. No. 200832100010
d/b/a Hilltop Shopping Center	)	FRN # 0010638468
Richmond, California	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: January 3, 2008****Released: January 7, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find Richmond Association, d/b/a Hilltop Shopping Center (“Richmond”), former licensee of Industrial/Business Pool Radio Service Station WPOG498, apparently liable for a forfeiture in the amount of six thousand, five hundred dollars (\$6,500) for operating the station without Commission authority and for failing to file a timely renewal application for the station. Richmond acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Sections 1.903(a) and 1.949(a) of the Commission’s rules.<sup>2</sup>

**II. BACKGROUND**

2. On October 25, 1999, the Wireless Telecommunications Bureau (“WTB”) granted Richmond a license in the Industrial/Business Pool Radio Service under the call sign WPOG498, with an expiration date of October 25, 2004. Richmond did not file a renewal application, and the WTB cancelled the license for WPOG498 on December 25, 2004. On May 14, 2007, Richmond filed with the WTB a request for Special Temporary Authority (“STA”) to operate WPOG498,<sup>3</sup> acknowledging in an attachment to the STA request its failure to renew the station’s license prior to its expiration date. Subsequently, Richmond filed a license application<sup>4</sup> for permanent authority to operate its station and the license was granted by the WTB on July 6, 2007, under the call sign WQHD555.

3. Because it appeared that Richmond may have operated WPOG498 after the expiration of its license, the WTB referred this case to the Enforcement Bureau for possible enforcement action. On August 2, 2007, the Enforcement Bureau’s Spectrum Enforcement Division issued to Richmond a letter of inquiry (“LOI”).<sup>5</sup>

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 1.903(a) and 1.949(a).

<sup>3</sup> See File No. 0003028346. WTB granted the STA on May 31, 2007, under the call sign WQGZ292.

<sup>4</sup> See File No. 0003097626.

<sup>5</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Alan Sousa, Richmond Association d/b/a Hilltop (August 2, 2007).

4. On September 13, 2007,<sup>6</sup> the Enforcement Bureau received Richmond's response to the LOI ("Response").<sup>7</sup> In its Response, Richmond stated that it became aware of the expiration of its license to operate station WPOG498 shortly before May 31, 2007.<sup>8</sup> According to Richmond, a former employee responsible for licensing matters had not submitted the license renewal prior to departing the company at the end of 2004<sup>9</sup> and "the responsibility for managing the FCC license had not been transferred to another employee."<sup>10</sup> Richmond admitted to operating station WPOG498 continuously without Commission authority from October 25, 2004 until May 31, 2007.<sup>11</sup>

### III. DISCUSSION

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization.<sup>12</sup> Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration."<sup>13</sup> Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>14</sup>

6. As a Commission licensee, Richmond was required to maintain its authorization in order to operate station WPOG498. Richmond admitted that it operated the station without Commission authority from the station's license expiration date of October 25, 2004, until the STA was granted May 31, 2007. By operating station WPOG498 for approximately two and one-half years without authorization, Richmond apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. Richmond also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

7. Section 503(b) of the Act,<sup>15</sup> and Section 1.80(a) of the Rules,<sup>16</sup> provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a

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<sup>6</sup> On September 6, 2007, Richmond filed an unsigned response to the LOI without an affidavit or declaration under penalty of perjury. On September 13, 2007, the Enforcement Bureau's Spectrum Enforcement Division received a copy of Richmond's signed response to the LOI, followed by receipt of the original response letter on September 14, 2007.

<sup>7</sup> See Letter from Herb Dunnivant, Interim Mall Manager, Richmond Associates d/b/a Hilltop Shopping Center to Karen Mercer, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 5, 2007).

<sup>8</sup> Response at 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2.

<sup>12</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>13</sup> 47 C.F.R. § 1.949(a).

<sup>14</sup> 47 C.F.R. § 1.955(a)(1).

<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 47 C.F.R. § 1.80(a).

forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeatedly” means more than once.<sup>17</sup> Based upon the record before us, it appears that Richmond’s violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>18</sup> Having considered the statutory factors, as explained below, we propose a total forfeiture of \$6,500.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authority and three thousand dollars (\$3,000) for failure to file required forms or information.<sup>19</sup> As the Commission recently held, a licensee’s continued operations without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.<sup>20</sup> Accordingly, we herein propose separate forfeiture amounts for Richmond’s separate violations.

10. We propose a \$5,000 forfeiture for Richmond’s continued operation of station WPOG498 after the expiration of its license on October 25, 2004. In proposing a forfeiture of \$5,000 for the station’s unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.<sup>21</sup> Consistent with recent precedent, the proposed \$5,000 forfeiture takes into account that Richmond’s unauthorized operations spanned almost two and one-half years from the license’s expiration date.<sup>22</sup> In addition, we propose a \$1,500 forfeiture for Richmond’s failure to file the renewal application for station WPOG498 within the time

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<sup>17</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992); see also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (Enf. Bur., Spectrum Enf. Div., 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006).

<sup>18</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>19</sup> 47 C.F.R. § 1.80(b).

<sup>20</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”)(proposing forfeitures of \$5,000 and \$1,500 against a broadcaster who operated its station for 14 months without Commission authority and failed to timely file its renewal application).

<sup>21</sup> See *Discussion Radio*, 19 FCC Rcd at 7438; see also *Imperial Sugar Company*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4987, 4990 (Enf. Bur., Spectrum Enf. Div., 2007), *forfeiture ordered*, 22 FCC Rcd 17346 (Enf. Bur., Spectrum Enf. Div., 2007) (“*Imperial Sugar*”); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd. 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005).

<sup>22</sup> See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); see also *Five Star Parking d/b/a Five Star Taxi Dispatch*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18857 (Enf. Bur., Spectrum Enf. Div., 2007)(proposing a \$5,000 forfeiture for operating a station 2½ years beyond the expiration of its license), *response pending*; *Imperial Sugar*, 22 FCC Rcd at 4990 (proposing a \$5,000 forfeiture for operating a station 1½ years beyond the expiration of its license).

period specified in Section 1.949(a) of the Rules.<sup>23</sup> Thus, we propose an aggregate forfeiture of \$6,500.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>24</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>25</sup> Richmond Association **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand, five hundred dollars (\$6,500) for the willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>26</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Richmond Association **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>27</sup>

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Herb Dunnavant,

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<sup>23</sup> See *Discussion Radio supra*; see also *Imperial Sugar*, 22 FCC Rcd at 4989-4990 (proposing a \$1,500 forfeiture for failure to file timely renewal application for a PLMRS station); *Hare Planting Co., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517, 13519 (Enf. Bur., Spectrum Enf. Div., 2006) (proposing a \$1,500 forfeiture for failure to file a timely renewal for a PLMRS station), *forfeiture ordered*, 22 FCC Rcd 7530 (Enf. Bur., Spectrum Enf. Div., 2007).

<sup>24</sup> 47 U.S.C. § 503(b).

<sup>25</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

<sup>26</sup> 47 C.F.R. § 1.80.

<sup>27</sup> 47 C.F.R. § 1.1914.

Richmond Association d/b/a Hilltop Shopping Center, 2200 Hilltop Mall Road, Richmond, California 94806.

**FEDERAL COMMUNICATIONS COMMISSION**

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau